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RICHARD W. WICKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

SHERI GARAY,

CV 08 1059
SAGE NO.

CASE NO.

Plaintiff,

**NOTICE OF REMOVAL OF CIVIL
ACTION TO UNITED STATES
DISTRICT COURT**

UNUM LIFE INSURANCE COMPANY OF
AMERICA, and DOES 1-10,

Defendants.

) NOTICE OF REMOVAL OF CIVIL
) ACTION TO UNITED STATES
) DISTRICT COURT

Defendants.

**TO THE JUDGES OF THE UNITED STATES DISTRICT COURT, AND TO
PLAINTIFF AND HER ATTORNEY OF RECORD:**

PLEASE TAKE NOTICE that Defendant UNUM LIFE INSURANCE COMPANY OF AMERICA (hereinafter "UNUM"), hereby removes the above-entitled civil action from the Superior Court of the State of California for the County of Contra Costa to the United States District Court for the Northern District of California.

This case is being removed pursuant to 28 U.S.C. §§ 1331, 1332, and 1441, *et seq.*

UNUM states that removal is proper for the following reasons:

1. On January 4, 2008, there was filed in the Superior Court of the State of California for the County of Contra Costa the above-entitled action bearing Case

1 Number MSC08-00001 in the records and files of that court. UNUM first received notice of the
 2 Summons and Complaint less than thirty days ago, on January 24, 2008. Thus, the time for
 3 removing a civil action has not yet expired. *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*
 4 (1999) 526 U.S. 344, 354; 119 S.Ct. 1322, 1329.

5 2. Defendant UNUM is incorporated under the laws of and maintains its principal
 6 place of business in the State of Maine.

7 3. Based upon information and belief, UNUM alleges that plaintiff SHERI GARAY
 8 is a citizen and a resident of the State of California.

9 4. The United States District Court for the Northern District of California is a proper
 10 venue in that the action being removed was filed in the Superior Court of the State of California,
 11 County of Contra Costa.

12 5. This civil action is being removed to Federal Court on the basis of federal
 13 diversity jurisdiction under the provisions of 28 U.S.C. Section 1332 and is one which may be
 14 removed to this Court by UNUM pursuant to the provisions of 28 U.S.C. Section 1441(a) in that
 15 it is a civil action wherein the amount in controversy exceeds the sum of Seventy-Five Thousand
 16 Dollars (\$75,000), exclusive of interest and costs, and is between citizens of different states.
 17 (Complaint, pg. 13, "Prayer")

18 6. The amount in controversy in this action far exceeds \$75,000. Plaintiff seeks
 19 amounts allegedly already owed, arguing that in the course of disability payments to plaintiff,
 20 UNUM asserted entitlement to a credit in the amount of at least \$74,000. See Complaint, "Facts
 21 Common to All Causes of Action," ¶¶ 12, 15, 19, 21. Although plaintiff is receiving and
 22 continues to receive permanent disability benefits, plaintiff alleges that "UNUM has also decided
 23 to pay Plaintiff approximately \$1,000 less per month than Plaintiff is owed under the policy . . ."
 24 Complaint, ¶ 31. Plaintiff claims that this \$1,000 per month is owing from March, 2002 to the
 25 present time for a total of \$106,000 through January, 2008. Complaint, ¶ 41 (2). On the face of
 26 plaintiff's Complaint, plaintiff claims entitlement to at least \$180,000 in past disability benefits.
 27 Plaintiff further alleges that "In 2002, 2003, and 2004, for any benefits paid, UNUM had
 28 improperly withheld taxes from the benefits despite the fact that Plaintiff paid the premiums

1 herself and therefore did not owe taxes on the benefits." Complaint, ¶ 22. Plaintiff also prays
 2 for general damages in excess of \$100,000 and for emotional distress which plaintiff has
 3 suffered as a result of financial losses. Complaint, ¶ 41 (5) Plaintiff also seeks attorney's fees
 4 and costs, for punitive and exemplary damages, and prejudgment interest. Complaint, Prayer,
 5 pg. 13. Punitive damages may be included in determining the amount in controversy. *Anthony v.*
 6 *Security Pac. Fin'l Services, Inc.*, (7th Cir. 1996) 75 F3d 311. Accordingly, that the amount in
 7 controversy in this action far exceeds \$75,000 is facially apparent from the face of plaintiff's
 8 complaint. *Gaus v. Miles, Inc.*, (9th Cir. 1992) 980 F2d 564. According to plaintiff's own
 9 complaint it is more probable than not that plaintiff's claim exceeds the jurisdictional minimum.
 10 *Sanchez v. Monumental Life Ins. Co.*, (9th Cir. 1996) 95 F3d 856, 860-861.

11 7. The District Court for the Northern District of California has original jurisdiction of
 12 this civil action under 28 U.S.C. 1332(a)(1) because the amount in controversy exceeds the
 13 jurisdictional requirement of this Court, exclusive of interest and costs, and is between citizens of
 14 different states.

15 8. This Court additionally has original jurisdiction over the subject matter of this civil
 16 action under 29 U.S.C. § 1331 pursuant to ERISA, 29 U.S.C. § 1001, *et seq.* Plaintiff has filed a
 17 "Complaint For Breach of Contract." Plaintiff's cause of action is a claim for benefits under a
 18 Long Term Disability Insurance Benefits policy Number 00108121 issued by UNUM to Site For
 19 Sore Eyes. (the "Plan"). Complaint, ¶ 7. The Plan is part of an employee welfare benefit plan
 20 within the meaning of 29 U.S.C. Section 1002(1). The enforcement of rights under the Plan is
 21 governed exclusively by federal law under ERISA. *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41,
 22 107 S.Ct. 1549, 95 L.Ed.2d 39 (1987).

23 9. Plaintiff seeks to recover benefits and to enforce rights under the Plan. Complaint,
 24 ¶¶ 1-33.

25 10. Plaintiff alleges that she was a "beneficiary" of the Plan as defined by ERISA. 29
 26 U.S.C. Section 1002(8). Complaint, ¶¶ 25-27.

27 11. The District Courts of the United States have original jurisdiction over, and federal
 28 law under ERISA controls, actions brought to recover benefits and to enforce rights under

employee welfare benefit plans. 29 U.S.C. Section 1132(e)(1); *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 107 S.Ct. 1549, 95 L.Ed.2d 39 (1987). Removal of such cases to federal court is proper. *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58, 107 S.Ct. 1542, 95 L.Ed.2d 55 (1987).

4 12. Attached hereto as Exhibit A is a true and correct copy of those pleadings and
5 process filed in the Superior Court of the State of California, County of Contra Costa, Case
6 No. MSC08-00001, which were served on UNUM.

7 13. A Notice of Filing of this Notice of Removal is being filed concurrently with the
8 Superior Court of the State of California, County of Contra Costa, and is concurrently being
9 served on plaintiff.

10 **WHEREFOR**, UNUM prays that this civil action be removed to this Court from the
11 Superior Court of the State of California, County of Contra Costa.

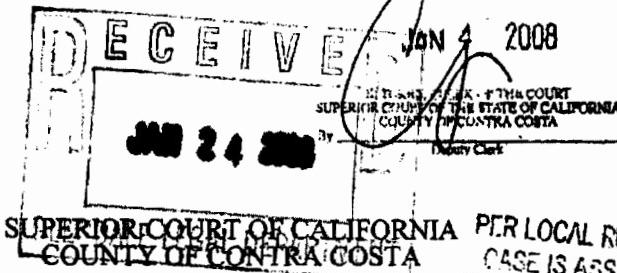
RIMAC & MARTIN, P.C.

15 DATED: February 21, 2008 By: Anna M. Martin
16 ANNA M. MARTIN
17 Attorneys for Defendant
UNUM LIFE INSURANCE COMPANY
OF AMERICA

1 JOHN F. MARTIN, ESQ. (SBN 52618)
 2 CHRISTINE HOPKINS, ESQ. (SBN 240248)
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6 Attorneys for Plaintiff
 SHERI GARAY

FILED



9 SUPERIOR COURT OF CALIFORNIA PER LOCAL RULE 5 THIS
 10 COUNTY OF CONTRA COSTA CASE IS ASSIGNED TO
 DEPT 2

11 SHERI GARAY Case No. C08-60001
 12 Plaintiff,
 13 v.
 14 UNUM LIFE INSURANCE COMPANY COMPLAINT FOR DAMAGES and
 OF AMERICA; DOES 1-10 REQUEST FOR JURY TRIAL FOR:
 15 Defendants.
 16 (1) BREACH OF CONTRACT;
 (2) DECLARATORY RELIEF;
 (3) BREACH OF IMPLIED COVENANT OF
 GOOD FAITH AND FAIR DEALING.

No SUMMONS ISSUED

19 Plaintiff SHERI GARAY (hereinafter "Plaintiff") respectfully requests a jury trial and alleges
 20 as follows:

PARTIES

- 21 1) At all times relevant to this complaint, Plaintiff is and was an adult citizen of the United
 States of America. During the times relevant to this complaint, Plaintiff maintained her residence in
 Contra Costa County, within the State of California.
- 22 2) At all times relevant to this complaint, Defendant UNUM LIFE INSURANCE
 COMPANY of AMERICA was a corporation doing business in the State of California under the
 regulation of the California Department of Insurance.
- 23 3) DOES 1-10 are fictitiously named defendants, whether individuals or corporations, with

103-20-200801040013

1 true names unknown. Plaintiff is ignorant of the true names and capacities of the defendants sued herein
2 as DOES 1-10, inclusive, and therefore sues those defendants by such fictitious names. Plaintiff will
3 amend her complaint to allege their true names and capacities when ascertained. Plaintiff is informed
4 and believes and thereon alleges that each of the fictitiously named defendants is responsible in some
5 manner for the occurrences herein alleged, and that Plaintiff's damages as herein alleged were legally
6 caused by their conduct.

7 4) UNUM LIFE INSURANCE COMPANY of AMERICA (hereinafter "UNUM") and
8 DOES 1-10 shall be collectively referred to herein as "Defendants."

9 5) At all times mentioned herein, Defendants were the agents, employees, parent
10 companies, and/or subsidiaries of one another and in doing the acts herein alleged were performing
11 within the scope and purpose of said agency and employment; in addition, each defendant has ratified
12 and approved the acts of each other defendant acting for and on behalf of the other.

FACTS COMMON TO ALL CAUSES OF ACTION

15 6) Up until she sold her business in January 2004 due to her disability, Plaintiff was the sole
16 proprietor of a Site for Sore Eyes business establishment located in Concord, California.

17 7) As a sole proprietor and for her benefit as a business owner, Plaintiff purchased a Long Term
18
19 Disability Insurance Benefits policy issued by UNUM (hereinafter "insurance benefits"). Plaintiff's
20 coverage under the plan became effective in October of 1995. Since October of 1995, Plaintiff, as a sole
21 proprietor, paid for the insurance policy premiums for herself.

23 8) Said insurance benefits provided that if Plaintiff became totally disabled from performing her
24 occupation, then she would receive 60% of her earnings, after the expiration of a 180 day waiting period,
25 for each month that she remained so disabled for a maximum of 24 months. Said insurance benefits
26 alternatively provided that if Plaintiff became unable to perform her occupation on a full-time basis, then
27 Plaintiff would still be entitled to disability benefits as long as she experienced a 20% loss in earnings.
28

1 After 24 months, Plaintiff would be entitled to continue to receive insurance benefits if she was disabled
2 from performing the duties of any gainful occupation for which she was reasonably qualified by
3 education, training, or experience. A true copy of Plaintiffs certificate of insurance issued to her by
4 UNUM is attached hereto and incorporated by reference as Exhibit 1.

6 9) Plaintiff has always paid any premiums due for her insurance benefits and duly performed all
7 other conditions precedent set forth in her certificate of insurance issued to her by UNUM.

9 10) On or about September 2001, Plaintiff became disabled from performing her duties as an
10 Optical Technician at her business, Site for Sore Eyes. Plaintiff underwent multiple surgeries for a
11 herniated disc, including surgeries in April 2002 and September 2003.

13 11) Plaintiff timely submitted her claim for UNUM for disability insurance benefits.
14

15 12) Unum initially paid Plaintiff disability benefits from March 4, 2002 through December 3,
16 2002 on the basis that she was totally disabled, but then stopped paying Plaintiff benefits. At that time
17 Unum determined that Plaintiff did not in fact qualify for the benefits already paid and charged Plaintiff
18 an overpayment in excess of \$29,000.

20 13) Plaintiff appealed Unum's decision regarding the overpayments its cessation of payment of
21 benefits and the overpayment throughout 2003 and 2004, and again in 2007 pursuant to Unum's re-
22 opening of the claim for evaluation under the California Regulatory Settlement Agreement. Unum did
23 not issue a final determination on the cessation of benefits and the overpayment until November 9, 2007.
24 Pursuant to these appeals, in 2007, Unum decided to pay Plaintiff benefits owed from March 4, 2002
25 through June 10, 2002 on the basis that Plaintiff was disabled under the policy during that time period
26 only.
27

1 14) Unum began paying Plaintiff benefits again when Unum opened a new claim for Plaintiff
2 with a new disability onset date of September 4, 2003 and a new elimination period ending March 2,
3 2004. Unum opened the new claim and required Plaintiff to wait through another elimination period
4 despite the fact that Plaintiff was disabled by the same exact condition and illness which disabled her
5 on or about August 2001.

6
7 15) Once Unum determined that it again owed Plaintiff benefits, Unum reduced Plaintiff's
8 monthly benefit amount for 28 months to recover the overpayment in excess of \$29,000 from the first
9 claim.

10
11 16) Unum later, in 2007, determined that it was improper to subject Plaintiff to two elimination
12 periods as her disability in 2003 was the same disability she had suffered in 2001. Unum later, in 2007,
13 determined it owed Plaintiff benefits from January 2004 onward, however Unum never paid Plaintiff
14 benefits for January and February 2004. At the same time, Unum again refused to pay Plaintiff benefits
15 from March 4, 2002 (the end of the first elimination period) through January 2004 on the basis that she
16 did not meet the definition of disability during that time period.

17
18 17) Unum, despite multiple appeals and despite the California Regulatory Settlement Agreement
19 Unum entered into with the California Department of Insurance (See Exhibit 2), has never paid and
20 continues to refuse to pay Plaintiff benefits owing from June 10, 2002 through March 2004. Unum did
21 so by refusing to consider and fully investigate claims that Plaintiff was totally disabled during the time
22 period and instead categorized Plaintiff as partially disabled. Plaintiff was entitled to benefits even if
23 only partially disabled as long as her earnings loss was 20%, however Unum improperly determined that
24 Plaintiff did not qualify for benefits despite the fact Plaintiff did suffer a 20% earnings loss. Unum
25 admits that Plaintiff was not earning money from performing any gainful activity but rather simply

1 receiving profits from the business she owned, yet Unum improperly and purposefully misconstrued the
2 policy language to regardless deny Plaintiff benefits.
3

4 18) Throughout the claims handling process, Unum has also incorrectly calculated the monthly
5 benefits owed to Plaintiff. The insurance policy requires Unum to use the most recent three years of a
6 sole proprietor's income to determine the monthly benefits amount. Unum used the tax years of 1998,
7 1999, and 2000 in order to calculate a lower basic monthly earning figure on the first claim because the
8 sole proprietorship had higher profits in the tax year 2001. Unum's method of calculating the basic
9 monthly earnings figure was improper under the insurance policy and under the California Regulatory
10 Settlement Agreement, yet Unum made a final decision on November 9, 2007 that it would not change
11 its calculation of the basic monthly earnings.
12

13 19) Moreover, Unum had calculated a higher basic monthly earnings figure on the second claim
14 it opened for Plaintiff in 2003, but then by its November 9, 2007 letter reversed the higher basic monthly
15 earnings amount. Because Unum decided that there should not have been a second elimination period,
16 Unum decided the basic monthly earnings amount from the first claim applied to the entire claim, up
17 through and continuing to the present and future payment of benefits. Unum then charged an
18 overpayment to Plaintiff for the difference between the higher monthly benefits amount and the lower
19 monthly benefits amount from March 2004 through to the present, resulting in an overpayment in excess
20 of \$8,000 which was immediately utilized to withhold all of Plaintiff's monthly benefit amounts until
21 paid off.
22

23 20) In February 2007, Unum had informed Plaintiff that her case was covered by the California
24 Regulatory Settlement Agreement. Then in November 2007, Unum informed Plaintiff that her case was
25
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28

1 not covered by the California Regulatory Settlement Agreement and that its May 2007 decision pursuant
2 to the California Regulatory Settlement Agreement was void and incorrect.
3

4 21) In 2005, Unum represented to Plaintiff that she was required to apply for Social Security
5 benefits in order to continue to receive benefits under the policy when in fact the policy contained no
6 such requirement. As a result, Plaintiff applied for and was approved for Social Security benefits, which
7 resulted in a \$37,000 overpayment charged to Plaintiff.
8

9 22) In 2002, 2003, and 2004, for any benefits paid, Unum had improperly withheld taxes from
10 the benefits despite the fact that Plaintiff paid the premiums herself and therefore did not owe taxes on
11 the benefits. Unum still owes Plaintiff for taxes improperly withheld from her benefits amount and
12 improperly double charged Plaintiff for those taxes by recouping overpayment amounts at their full
13 value, not taking into account that Plaintiff had in fact received less in benefits due to the taxes
14 wrongfully withheld.
15

16 23) Throughout the claims handling process, Unum has constantly changed its position and
17 analysis of Plaintiff's claim and constantly misinformed Plaintiff about the insurance policy's provisions.
18 Unum issued so many contradictory decisions and statements, that it has become highly difficult if not
19 impossible for the average insured to understand what has happened on the claim and what rules govern
20 the claim. Unum's constant mishandling of Plaintiff's claim has caused Plaintiff severe financial and
21 emotional distress and has caused Plaintiff to spend significant sums on attorneys fees and to spend
22 copious amounts of her own time reviewing her claims file, including Unum's complicated and multi-
23 page letters (which refer back to old letters and deem some old letters as voided or incorrect).
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1 **FIRST CAUSE OF ACTION**
2 *(Breach of Contract)*
3 *(All Defendants)*

4 24) Plaintiff incorporates all preceding paragraphs of this complaint into this cause of action
5 as if fully set forth herein.

6 25) At all times material herein, a contractual relationship existed between Plaintiff and
7 defendants, and each of them. The written contract between Plaintiff and Defendant is attached as
8 Exhibit 1.

9 26) Plaintiff has performed all conditions in accordance with the terms of her insurance benefits
10 including giving defendants due and timely notice and proof of her claim.

11 27) Despite Plaintiffs performance under her insurance benefits, defendants, and each of them,
12 have failed and refused to make payments owed to Plaintiff, have improperly and illegitimately charged
13 overpayments to Plaintiff's account, have incorrectly calculated the amount of benefits due to Plaintiff
14 and underpaid Plaintiff, have improperly withheld taxes from Plaintiff's benefits, and have breached
15 their promises of payment of insurance benefits in accordance with the written contract, thereby
16 breaching their contractual obligations.

17 28) Defendants' breach of contract was and is a substantial factor in causing Plaintiff harm,
18 including monetary loss and emotional distress.

19 WHEREFORE, Plaintiff prays for the Relief as requested in the Prayer of this Complaint.

1 **SECOND CAUSE OF ACTION**
2 *(Declaratory Relief)*
3 *(All Defendants)*

4 29) Plaintiff incorporates all preceding paragraphs of this complaint into this cause of action
5 as if fully set forth herein.

6
7 30) An actual, present and justiciable controversy has arisen between the parties to this action
8 regarding performance of obligations under the subject group insurance policy. Plaintiff was insured
9 under their group insurance policy issued by UNUM described previously in Paragraph 8, *supra*.

10
11 31) Defendants have breached their duty to Plaintiff by failing to perform the contractual
12 obligations owed when they failed to pay Plaintiff the full amount of benefits owing under the terms
13 of the insurance policy. Though UNUM acknowledges that Plaintiff is currently totally disabled and
14 eligible for benefits, UNUM continually re-assesses Plaintiff's claim in order to charge
15 overpayments and avoid paying Plaintiff the monthly benefits due to her. UNUM has also decided to
16 pay Plaintiff approximately \$1,000 less per month than Plaintiff is owed under the policy due to
17 breach of contractual provisions regarding the calculation of Plaintiff's basic monthly earnings.
18
19

20 32) There is a dispute, *inter alia*, as to whether UNUM is currently applying incorrectly
21 determined overpayments to Plaintiff's account, is currently paying Plaintiff at a lower monthly
22 benefit amount than required by the contract, whether benefits are accrued and payable, and if
23 Plaintiff is entitled to future benefits at a higher monthly benefit amount, without future offsets and
24 overpayments being newly charged against her account for past activity on the account.
25
26

27 33) Plaintiff requests that this court grant relief through a declaration that defendants are to
28 perform all contractual obligations owed including payment of all benefits both presently and

1 previously owed under the subject policies, as well as future benefits. Plaintiff requests that this
2 court state a declaration of the duties and rights of the parties to this action.
3

4 WHEREFORE, Plaintiff prays of the relief requested in the Prayer of this Complaint.
5

6 **THIRD CAUSE OF ACTION**
7 *(Breach of the Implied Covenant of Good Faith and Fair Dealing)*
8 *(All Defendants)*

9 34) Plaintiff incorporates all preceding paragraphs of this complaint into this cause of action
10 as if fully set forth herein.

11 35) The insurance benefits here at issue contained a promise by defendants in the form of an
12 implied covenant of good faith and fair dealing that, *inter alia*, required defendants to conduct a
13 thorough and objective investigation of Plaintiff's claim, and further required said defendants to give
14 equal consideration to the interests of Plaintiff, as an insured under the insurance coverage provided
15 her by defendants, as defendants would give their own interests, and to do nothing to prevent
16 Plaintiff from receiving the benefits due her of the promised insurance protection. Rather than
17 abiding by these legal obligations which defendants had to Plaintiff as an insured, they have
18 breached and violated each of them, handled Plaintiff's claim in "bad faith," violated statutes,
19 violated the California Regulatory Settlement Agreement, and otherwise acted unlawfully, and
20 knowingly declined to pay her claim when they knew it was to be paid. Plaintiff is informed and
21 believes that the actions of defendants set forth herein are standard operating procedure for
22 defendants and are regularly employed by them as a pattern and practice as a means of avoiding the
23 payment of valid claims.
24

25 36) In addition, defendants have breached these covenants in that they have:
26
27

- 1 (a) unreasonably delayed and denied to Plaintiff the benefits due her under the
2 insurance policy;
- 3 (b) failed to reasonably investigate Plaintiff's claim;
- 4 (c) breached the promise to pay benefits upon proof of disability;
- 5 (d) misrepresented pertinent facts and insurance benefits provisions pertaining to
6 coverage for total and partial disability;
- 7 (e) failed to acknowledge and act reasonably promptly upon communications
8 regarding claims arising under the insurance benefits;
- 9 (f) purposefully construed terms of the insurance policy in a manner adverse to
10 Plaintiff and in a manner contrary to the plain reading of the insurance policy;
- 11 (g) purposefully and constantly changed its position in regards to Plaintiff's claim to
12 best suit its own financial interest and to Plaintiff's detriment;
- 13 (h) purposefully failed to abide by the California Regulatory Settlement Agreement
14 and purposefully misinformed Plaintiff that her claim is not covered by the California
15 Regulatory Settlement Agreement;
- 16 (i) failed to effectuate prompt, fair, and equitable settlement of claims in which
17 liability has become reasonably clear;
- 18 (j) unreasonably withheld, and failed to pay monthly disability benefits due Plaintiff;
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- (k) supported and ratified the mistakes, misstatements and other wrongful conduct of agents and employees at the expense of the insured and her valid claim; and
- (l) compelled Plaintiff to institute litigation to recover amounts due under the disability insurance benefits, which amounts are unreasonably withheld and unquestionably owed;
- (m) improperly utilized aggressive surveillance on Plaintiff;
- (n) targeted Plaintiff's claim for denial or termination or reduction of benefits due to the fact Plaintiff's claim is for a high benefit amount over a long period of continuing coverage;
- (o) mischaracterized the Plaintiff's occupation and/or its duties in determining whether Plaintiff could perform with reasonable continuity the substantial and material duties of his or her own occupation; and
- (p) knowingly applied a definition of "disability" inconsistent with California case law.

37) At all times during the processing of Plaintiff's claim, defendants had the resources to
promptly and timely evaluate this claim and pay it in a timely manner. Rather than abiding by the
law and fulfilling the promises which defendants made to Plaintiff, they intentionally manipulated
Plaintiff's claim for insurance benefits and their interpretation of the insurance policy's provisions in
an effort to find any basis for denying it or reducing the amount of benefits owed, and denied the
claim on completely erroneous, meritless, specious and phony basis.

1 38) Defendants have engaged in other wrongful conduct resulting in their breaking the law,
2 violating statutory obligations they have under the Laws of California, and breaching their good faith
3 claims handling responsibilities which they have to Plaintiff as one of their insureds. This course of
4 conduct is an accepted and directed course of wrongful and unlawful conduct in claims handling by
5 defendants, and has resulted in a pattern and practice of unlawful claims denials of disability claims
6 similar to that claim made by Plaintiff. As part of this wrongful course of conduct, defendants have
7 wrongfully and improperly denied Plaintiffs claim to the benefits she was entitled and have refused
8 and continued to refuse to pay in full what defendants promised they would pay Plaintiff should she
9 become totally disabled from performing the duties of her occupation. In addition, defendants have
10 unreasonably delayed and denied full payment of Plaintiff's claim in violation of their duties under
11 the contract and of the covenants of good faith and fair dealing contained therein.

15 39) As a result of defendants' wrongful conduct as set forth herein, Plaintiff has suffered
16 serious financial injury, including unpaid and underpaid insurance benefits afforded to her by
17 defendants, and other economic injury, as well as emotional distress and worry over her financial
18 circumstances, which were already a concern because of her medical problems. She has not only
19 worried and become anxious about her financial losses, and set back, but feared a substantial loss of
20 her assets, lost her business and is facing the loss of her home. She incurred economic and emotional
21 distress and has been forced to bring this lawsuit and incur the attorneys' fees and costs.. As a
22 proximate result of this wrongdoing by defendants, Plaintiff has suffered substantial and enduring
23 financial injury and emotional distress as alleged herein.

27 40) Defendants' conduct as described herein was malicious, oppressive and fraudulent, and
28 thereby justifies an award of punitive damages against Defendants.

1 41) As a direct and proximate result of the wrongdoing by defendants, Plaintiff has and will
2 suffer losses as hereinafter requested in the Prayer of this Complaint.
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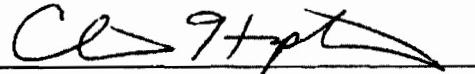
4 WHEREFORE, Plaintiff prays for relief as follows:

- 5 1) For monthly disability benefits due and payable to Plaintiff from June 10, 2002 through
6 March 2004;
- 7 2) For compensation in the amount of the difference between the lower monthly benefit
8 amount determined by Defendants and the higher monthly benefit amount actually owed to
9 Plaintiff from March 2002 through the present and continuing in the future;
- 10 3) For compensation for taxes wrongfully withheld from Plaintiff's benefits;
- 11 4) Compensation for all financial injury proximately caused by the wrongdoing of defendants
12 as proven at trial;
- 13 5) For general damages, in excess of \$100,000, for emotional distress which Plaintiff has
14 suffered as a result of the financial losses, wrongdoing of defendants and injury proximately
15 caused by defendants;
- 16 6) For attorneys fees;
- 17 7) For punitive damages because of the malice, oppression and fraud of defendants in an
18 amount appropriate to punish them and to deter them and others from similarly acting;
- 19 26 8) For costs of suit incurred herein;
- 20 27 28 9) For prejudgment interest as determined is appropriate under the law; and

1 10) For such other and further relief as is appropriate based on the above.
2
3
4

5 DATED: 1-3-08

6 LAW OFFICES OF JOHN F. MARTIN
7 A Professional Corporation

8 By: 

9 CHRISTINE HOPKINS, ESQ.
10 Attorney for Plaintiff Sheri Garay

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BBEC

Existing Claims

BENEFITS

Enter Action and press Enter.

Action . . . : __ (1=Add Clmt 2=Reassign)
Below Action: __ (3=Claimant 4=Mg Clm 5=Clm Stat 6=Comp 7=Reg Sch
8=Sp Comp 9=Sp Sch 10=Pymt Hst 11=Overpymt 12=ExistPH 13=Find Ctc
14=Prg St 15=Reasg 16=Payee 17=Waiver 18=Accum 19=W4 Tax Calc}
Act Claimant Clm ID Evt Owner Birth Dt Policy Prd Typ
 Garay, Sheri 0099243598 OP CPI06 07/17/1952 00108121 LTD
 __ Garay, Sheri 0099872770 CL CWX04 07/17/1952 00108121 LTD

2 Claim(s) Found

Command ===>

F1=Help

F3=Exit
F9=FindClm

F5=Popup
F11=BASMenu

F6=Cancel

BBCM

Claimant

BENEFITS

Tax ID : 051-46-2747 Tax ID Juris: US
Last . : Garay First . . . : Sheri
Mid . : Prefix . . . : MS Suffix . . . :
Bth Dt : 07/17/1952 Gender . . . : F Education :

Addr1 : 3326 DORAL COURT Addr Upd : 06/20/2002
Addr2 : C3MLC
Addr3 :
City . : Walnut Creek ST/PR . . . : CA
Zip . : 94598-3643 Skip Scrub: N
Phone : (925) 935-4847 Ctry . : US Ctry Cd . :
Fax . : () Ext . : Ctry Cd . :

Dth Dt : Lang . : en US For.Nat'l : N

Bank # : 121042882 Sav/Chk: CHK Account # : 6772569635

Command ==>

F1=Help F2=Temp F3=Exit F5=Popup F6=Cancel
F9=FindClm F10=Nav F11=BASMenu

BBMC

Manage Claim

BENEFITS

Claimant: Garay, Sheri Clm Stat: OP PAYINP REOPNI Page: 001
Clm ID : 0099243598 Stat Dt : More: +

Hire Dt . . . : 07/01/1989 Dis Dt . . . : 09/05/2001 1st Treat Dt: 09/05/2001
EE Eff Dt : 10/01/1995 Last Wrk Dt: 09/02/2001 1st Hosp Dt : _____
Benefit Dt : 09/05/2001 Delivery Dt : _____

EE ID . . . :
Policy . . . : 00108121 Div . . . : 0001 Product . . . : MINI LTD TRUST
Elig Group : 001 Choice . . . : — Product Line: LTD
Report Loc : Report Group: _____
Occ Code . . : 716 Job Title : OPTICIAN
Pri ICD9 . . : 722.0 ICD9 Desc : CERVICAL DISC DISPLACEMENT
Sec ICD9 . . : _____ Ill/Inj . . : INJ Work Rlt: N Work Type . . : _____

Receive Dt : 06/19/2002 EE Form . . : Y ER Form : Y Medical Info : Y
Rider . . . : _____

Command ==>

F1=Help F2=LogWarns F3=Exit F5=Popup F6=Cancel
F8=NextClm F9=FindClm F10=Nav F11=BASMenu

BBC2

Manage Claim 2

BENEFITS

Claimant: Garay, Sheri Clm Stat: OP PAYINP REOPNI
Clm ID : 0099243598
Dis Dt . : 09/05/2001 Dis Age . : 49 Curr Age : 55
Policy . : 00108121 Time Accum : 59 M 9 D Total Paid: 53,923.41
Div . . : 0001 Div Name . : NEW AGE OPTICAL DBA
Div Eff : 10/01/1995 Div Term . :
Def Of Dis : 2 YEAR OWN OCC W/RESIDUAL

EE Post-Tax#: 100.00 Earnings: 8329.06 Mode . : MO
Plan EP: 180 D 03/03/2002 Plan Dur: 07/16/2017
Ovrd EP: D 65 A
Ovrd Dur: _____ D

Res Dt . : 07/16/2017 Part RTW Dt: _____
Work Unit: ADL Loss . : N Full RTW Dt: _____

Command ==> _____ F3=Exit F5=Popup F6=Cancel
F1=Help F9=FindClm F10=Nav F11=BASMenu

07:18:18 Thu Jan 24, 2008

BBCS

Claim Status

BENEFITS

Claimant: Garay, Sheri

Page: 001

More: +

Create Dt	User	Off	Eff Dt	Evt Type	Reason	Cancel Avy? . : _
10/04/2007	CWX04	G122		OP Payment in proc	Reopen - new info receiv	
05/09/2007	#PS1TWH	SCRU	03/10/2003	CL Termination	173 No Loss of Earnings	
05/09/2007	J1CLC	SCRU		OP Payment in proc	Reopen - new info receiv	
05/08/2007	J1CLC	SCRU	03/09/2003	CL Termination	173 No Loss of Earnings	
05/08/2007	J1CLC	SCRU		OP Payment in proc	Reopen - new info receiv	
08/18/2006	CBA06	PFSS	10/16/2003	CL Termination	190 Transfr of Liability	
10/30/2003	C26MG	GORT	10/16/2003	CL Termination	ERISA upheld	
04/04/2003	C10AA	GINT		NT ERISA pending		
02/28/2003	C26MG	GORT	12/04/2002	CL Termination	RTW earnings exceed max	
08/02/2002	C26MG	GORT		OP Payment in proc	Liability accepted	
06/19/2002	C3MLC	GINT		OP Ready for liabi		

Command ==>

F1=Help	F3=Exit	F5=Popup	F6=Cancel
F8=Fwd	F9=FindClm	F10=Nav	F11=BASMenu

BBCS

Claim Status

BENEFITS

Claimant: Garay, Sheri

Page: 002

More: -

Create Dt	User	Off	Eff Dt	Evt Type	Reason	Cancel Avy? . : _
06/19/2002	C3MLC	GINT		NT Missing require		

06/19/2002 C3MLC GINT NT Missing require

Command ==>

F1=Help
F7=Bkwd

F3=Exit F9=FindC1m F10=Nav

F5=Popup
F11=BASMenu

F6=Cancel

BBCS

Claim Status

BENEFITS

Claimant: Garay, Sheri

Page: 001

More: +

Create Dt	Us	User Detail	LTD BENEFITS	
10/04/2007 CW	BB15	User : CWX04		l Avy? . : _
05/09/2007 #P		User Name : Popovich, Philip		info receiv
05/09/2007 J1		Ben Office: G122		of Earnings
05/08/2007 J1				info receiv
05/08/2007 J1		F3=Exit	F6=Cancel	of Earnings
08/18/2006 CB				info receiv
10/30/2003 C26MG	GORT	10/16/2003 CL Termination	ERISA upheld	of Liability
04/04/2003 C10AA	GIINT	NT ERISA pending		
02/28/2003 C26MG	GORT	12/04/2002 CL Termination	RTW earnings exceed max	
08/02/2002 C26MG	GORT	OP Payment in proc	Liability accepted	
06/19/2002 C3MLC	GIINT	OP Ready for liabi		

Command ==>

F1=Help	F3=Exit	F5=Popup	F6=Cancel
F8=Fwd	F9=FindClm	F10=Nav	F11=BASMenu

07:18:37 Thu Jan 24, 2008

BBCS

Claim Status

BENEFITS

Claimant: Garay, Sheri

Page: 001

More: +

Create Dt	Us	User Detail	LTD BENEFITS	
10/04/2007	CW	User : #PS1TWH		l Avy? . : _
05/09/2007	#P	User Name : White, Thomas A.		info receiv of Earnings
05/09/2007	J1	Ben Office: C111		info receiv of Earnings
05/08/2007	J1			info receiv of Liability
05/08/2007	J1	F3=Exit	F6=Cancel	
08/18/2006	CB			
10/30/2003	C26MG	GORT 10/16/2003 CL Termination	ERISA upheld	
04/04/2003	C10AA	GIINT NT ERISA pending		
02/28/2003	C26MG	GORT 12/04/2002 CL Termination	RTW earnings exceed max	
08/02/2002	C26MG	GORT OP Payment in proc	Liability accepted	
06/19/2002	C3MLC	GIINT OP Ready for liabi		

Command ==>

F1=Help	F3=Exit	F5=Popup	F6=Cancel
F8=Fwd	F9=FindClm	F10=Nav	F11=BASMenu

BBCS

Claim Status

BENEFITS

Claimant: Garay, Sheri

Page: 001

More: +

Create Dt	Us	BB15	User Detail	LTD BENEFITS	
10/04/2007	CW	User : J1CLC			l Avy? . : _
05/09/2007	#P	User Name : Lewis,Carol			info receiv of Earnings
05/09/2007	J1	Ben Office: C144			info receiv of Earnings
05/08/2007	J1				info receiv of Earnings
05/08/2007	J1		F3=Exit	F6=Cancel	info receiv of Liability
08/18/2006	CB				
10/30/2003	C26MG	GORT 10/16/2003 CL Termination	ERISA upheld		
04/04/2003	C10AA	GINT	NT ERISA pending		
02/28/2003	C26MG	GORT 12/04/2002 CL Termination	RTW earnings exceed max		
08/02/2002	C26MG	GORT	OP Payment in proc	Liability accepted	
06/19/2002	C3MLC	GINT	OP Ready for liabi		

Command ==>

F1=Help	F3=Exit	F5=Popup	F6=Cancel
F8=Fwd	F9=FindClm	F10=Nav	F11=BASMenu

07:18:45 Thu Jan 24, 2008

BBRC

Regular Payment Components

BENEFITS

Claimant : Garay, Sheri Clm Stat : OP PAYINP REOPNI
 Pymt Mode: Monthly EP End Dt: 03/03/2002
 Basic Ben: 4,997.44 Dur Dt . : 07/16/2017
 Min Ben : 499.74 Owner . : CPI06
 Pens Ben : .00

Comp	Comp Desc	Begin Dt	End Dt	Amount	PR D
BB	Basic Benefit	03/04/2002	07/16/2017	4,997.44	Pay / e To ST 1
PSS	Primary Social Se	03/01/2005	07/16/2017	-1,838.00	CLN — —
OVPR	Overpayment Reduc	01/04/2008	02/03/2008	-84.84	CLN — —

Command ==>

F1=Help

F3=Exit

F9=FindClm

F10=Nav

F5=Popup

F11=BASMenu

F6=Cancel

BBRS

Regular Payment Schedule

BENEFITS

Claimant: Garay, Sheri

Clm Stat: OP PAYINP REOPNI

Current Period

Auto: # Pymts : 34

Bgn Dt: 01/04/2008

Lead Days.....: 6

End Dt: 02/03/2008

Schd End Dt....: 11/03/2010

Rls Dt: 01/28/2008

Schedule Status . . . : APP

Dur End Dt . . : 07/16/2017

Approval Request To . . : _____

Time Accum.....: 59 M 9 D

Below Action: (1=Current Payment Detail 2=Mailing Instructions)

Act	Amount	Payee Name	Pymt			
			Type	Text	Text	Text
—	3,074.60	Sheri Garay	CHK	—	—	—

Command ===> _____

F1=Help

F3=Exit

F5=Popup

F6=Cancel

F9=FindClm

F10=Nav

F11=BASMenu

07:19:00 Thu Jan 24, 2008

BBPH

Payment History

BENEFITS

Enter Action and press Enter.

Claimant: Garay, Sheri

Clm Stat: OP PAYINP REOPNI Page :001
More : +

Below Action: (1=Pyamt Hst Detail 2=EOB Copies 3=Stops and Reversals)

Act	Release Dt	Payee	Amount	Pyamt		Status	Status Dt
				#	Type		
	12/27/2007	CLN	0.00	30534627	EOB	BOA	PAID 12/27/2007
	11/27/2007	CLN	0.00	30284251	EOB	BOA	PAID 11/27/2007
	10/31/2007	CLN	3,159.44	08052559	CHK	Fleet	PAID 10/31/2007
	10/27/2007	CLN	-18,959.45	30007461	RFD	Fleet	FCOM 10/27/2007
	10/24/2007	CLN	0.00	29990351	EOB	Fleet	PAID 10/24/2007
	10/23/2007	OTH	18,959.45	08028371	CHK	Fleet	PAID 10/23/2007
	10/20/2007	OTH	0.00	29954799	EOB	Fleet	PAID 10/20/2007
	10/18/2007	OTH	0.00	29941469	EOB	Fleet	PAID 10/18/2007
	05/09/2007	CLN	15,991.81	07562901	CHK	Fleet	PAID 05/09/2007
	05/08/2007	CLN	5,456.61	07562389	CHK	Fleet	PAID 05/08/2007
	08/19/2006	CLN	382.30	06822816	CHK	Fleet	PAID 08/19/2006

Command ==>

F1=Help	F3=Exit	F5=Popup	F6=Cancel
F8=Fwd	F9=FindClm	F10=Nav	F11=BASMenu

BBPH

Payment History

BENEFITS

Enter Action and press Enter.

Claimant: Garay, Sheri Clm Stat: OP PAYINP REOPNI Page :002
More :-

Below Action: (1=Pymt Hst Detail 2=EOB Copies 3=Stops and Reversals)

Act	Release Dt	Payee	Amount	Pymt		Bank	Status	Status Dt
				#	Type			
	01/09/2003	CLN	4,518.14	02481401	CHK	Fleet	PAID	01/09/2003
	12/18/2002	CLN	4,518.14	02404907	CHK	Fleet	PAID	12/18/2002
	12/03/2002	CLN	4,518.14	02352770	CHK	Fleet	PAID	12/03/2002
	11/12/2002	CLN	3,102.96	02282852	CHK	Fleet	PAID	11/12/2002
	10/02/2002	CLN	0.00	14072094	EOB	Fleet	PAID	10/02/2002
	08/06/2002	CLN	4,518.14	01935281	CHK	Fleet	PAID	08/06/2002
	08/05/2002	CLN	5,121.41	01929474	CHK	Fleet	PAID	08/05/2002

Command ==>

F1=Help
F7=Bkwd

F3=Exit

F9=FindC1m

F10=Nav

F5=Popup

F11=BASMenu

F6=Cancel

BBHD

Payment History Detail

BENEFITS

Claimant: Garay, Sheri Clm Stat: OP PAYINP REOPNI
Pymt Amt : 0.00
Pymt # . : 30534627 Payee Name: Sheri Garay

Release Dt: 12/27/2007 Mailee . : Sheri Garay
Status . : PAID Schd Type : RGR 3326 DORAL COURT
Pymt Text : 311 Walnut Creek, CA 94598-3643

Sp Routing:

Created . : CWX04

Approved :

Reissued : Pymt Period: 12/04/2007 - 01/03/2008 Mthly Basis: 30-Day
PR/
Comp Desc Begin Dt End Dt Amount ST Text

Basic Benefit 12/04/2007 01/03/2008 4,997.44

Primary Social Security 12/04/2007 01/03/2008 -1,838.00

Overpayment Reduction 12/04/2007 01/03/2008 -3,159.44

Command ==>

F1=Help

F3=Exit

F9=FindClm

F5=Popup

F10=Nav

F11=BASMenu

F6=Cancel

07:19:09 Thu Jan 24, 2008

BBOP

Overpayment

BENEFITS

Claimant: Garay, Sheri

Clm Stat: OP PAYINP REOPNI

Ovrpym Amt: 6,403.72 Reason: OTH Recvry Mthd: RVR Monthly Amt: 3159.00
Bal Due : 84.84Whose \$? : CLN

Tax Yr	Begin Dt	End Dt	Amount	Balance Due
2006	01/01/2006	12/31/2006	6,403.72	84.84

Tax Detail : Y

Overpayment Recovery: Below Action: (1=Payment History Detail)

Act	Type	Pymt #	Receive Dt	Amount	Acct	Stat	Status Dt
—	OVRRVR	030534627	12/27/2007	3,159.44	—	—	12/27/2007
—	OVRRVR	030284251	11/27/2007	3,159.44	—	—	11/27/2007

Command ==> 12

F1=Help F3=Exit F4=SelOP F5=Popup F6=Cancel
F9=FindClm F10=Nav F11=BASMenu

07:19:12 Thu Jan 24, 2008

BBEP

Existing Policyholders on BAS

BENEFITS

Enter Action and press Enter.

Pol No: 00108121Below Action: (1=Policyholder 2=PH Reports 3=STD PH Info
4=SI STD PH Info 5=PH Reports2 6=Avail PH CtcS 7=Report Groups
8=Pay Groups 9=SI LTD PH Info)

Act Div	Policyholder Name	Policyholder Name 2
0000	NEW AGE OPTICAL DBA	SITE FOR SORE EYES
0001	NEW AGE OPTICAL DBA	SITE FOR SORE EYES

Command ==>

F1=Help

F3=Exit

F6=Cancel

F9=FindClm

F11=BASMenu

BBPS

Program Status

LTD BENEFITS

Claimant: Garay, Sheri

Clm Stat: OP PAYINP REOPNI

Act Create Dt	User	Off	Eff Dt	Program ID	Status
10/04/2007	CWX04	G122	03/01/2005	Social Securit	Awarded
11/20/2007	CBH04	E112		Triaged @ Xfer	Recertify in 24 months

Command ==>

F1=Help

F3=Exit

F9=FindClm

F10=Nav

F5=Popup

F11=BASMenu

F6=Cancel

BBCM

Claimant

BENEFITS

Tax ID : 051-46-2747 Tax ID Juris: US
Last . : Garay Prefix . . : MS First . . : Sheri
Mid . : _____ Suffix . . : _____
Bth Dt : 07/17/1952 Gender . . : F Education : _____

Addr1 : 3326 DORAL COURT Addr Upd : 06/20/2002
Addr2 : _____ C3MLC
Addr3 : _____
City . : Walnut Creek ST/PR . . : CA
Zip . : 94598-3643 Ctry . : US Skip Scrub: N
Phone : (925) 935-4847 Ext . . : _____ Ctry Cd . : _____
Fax . : (____) _____ Ext . . : _____ Ctry Cd . : _____

Dth Dt : _____ Lang . : en US For.Nat'l : N
Bank # : 121042882 Sav/Chk: CHK Account # : 6772569635

Command ==>

F1=Help F2=Temp F3=Exit F5=Popup F6=Cancel
F9=FindClm F10=Nav F11=BASMenu

BBMC

Manage Claim

BENEFITS

Claimant: Garay, Sheri Clm Stat: CL TERM 181 Page: 002
Clm ID : 0099872770 Stat Dt : 09/02/2007 More: -

Hire Dt . . : 11/01/1989 Dis Dt . . : 09/04/2003 1st Treat Dt: _____
EE Eff Dt : 10/01/1995 Last Wrk Dt: 09/03/2003 1st Hosp Dt : _____
Benefit Dt : 09/04/2003 Delivery Dt : _____

EE ID . . :
Policy . . : 00108121 Div . . . : 0001 Product . . . : MINI LTD TRUST
Elig Group : 001 Choice . . . : — Product Line: LTD
Report Loc : — Report Group: _____

Occ Code . . : 279 Job Title : Sales- Optician
Pri ICD9 . . : 722.10 ICD9 Desc : DISPLACEMENT OF LUMBAR INTERVERTEBRAL DI
Sec ICD9 . . : — Ill/Inj . . : ILL Work Rlt: N Work Type . . : —

Receive Dt : 12/27/2003 EE Form . . : Y ER Form : Y Medical Info : Y
Rider . . : —

Command ==>

F1=Help F2=LogWarns F3=Exit F5=Popup F6=Cancel
F7=PrevClm F9=FindClm F10=Nav F11=BASMenu

BBC2

Manage Claim 2

BENEFITS

Claimant: Garay, Sheri Clm Stat: CL TERM 181
Clm ID : 0099872770
Dis Dt . : 09/04/2003 Dis Age . : 51 Curr Age : 55
Policy . : 00108121 Time Accum : 42 M 0 D Total Paid: 151,560.46
Div . . : 0001 Div Name . : NEW AGE OPTICAL DBA
Div Eff : 10/01/1995 Div Term . :
Def Of Dis : 2 YEAR OWN OCC W/RESIDUAL

Res Dt . : 07/16/2017 Part RTW Dt: _____
Work Unit: ADL Loss . : N Full RTW Dt: _____

Command ==> _____
F1=Help F3=Exit F5=Popup F6=Cancel
F9=FindClm F10=Nav F11=BASMenu

BBCS

Claim Status

BENEFITS

Claimant: Garay, Sheri

Create Dt	User	Off	Eff Dt	Evt Type	Reason	Cancel Avy? . . :
10/04/2007	CWX04	G122	09/02/2007	CL Termination	181 Not Elig/Coverage	
04/30/2004	C22JP	GORT		OP Payment in proc	Liability accepted	
12/29/2003	C13HM	PINT		OP Ready for liabi		
12/29/2003	C13HM	PINT		NT Missing require		

Command ==>

F1=Help

F3=Exit

F9=FindClm F10=Nav

F5=Popup

F11=BASMenu

F6=Cancel

07:19:45 Thu Jan 24, 2008

BBCS

Claim Status

BENEFITS

Claimant: Garay, Sheri

Create Dt	Us	BB15	User Detail	LTD BENEFITS	
10/04/2007	CW	User : CWX04			l Avy? . : _
04/30/2004	C2	User Name : Popovich, Philip			/Coverage
12/29/2003	C1	Ben Office: G122			cepted
12/29/2003	C1		F3=Exit	F6=Cancel	

E7312 Invalid PF Key.

Command ==>

F1=Help

F3=Exit

F9=FindClm F10=Nav

F5=Popup

F11=BASMenu

F6=Cancel

07:19:50 Thu Jan 24, 2008

BBCS

Claim Status

BENEFITS

Claimant: Garay, Sheri

Create Dt	Us	BB15	User Detail	LTD BENEFITS	l Avy? . : _
10/04/2007	CW	User : C22JP			/Coverage
04/30/2004	C2	User Name : Petsche, Jason			cepted
12/29/2003	C1	Ben Office: GLC			
12/29/2003	C1		F3=Exit	F6=Cancel	

Command ==>

F1=Help

F3=Exit

F5=Popup

F6=Cancel

F9=FindClm F10=Nav

F11=BASMenu

07:19:53 Thu Jan 24, 2008

BBRC

Regular Payment Components

BENEFITS

Claimant : Garay, Sheri	Clm Stat : CL TERM 181
Pymt Mode: Monthly	EP End Dt: 03/01/2004
Basic Ben: 5,427.02	Dur Dt . : 07/16/2017
Min Ben : 542.70	Owner . : <u>CWX04</u>
Pens Ben : .00	

Comp	Comp Desc	Begin Dt	End Dt	Amount	To	ST	1
BB	Basic Benefit	03/02/2004	07/16/2017	5,427.02	CLN	—	—
PSS	Primary Social Se	03/01/2005	07/16/2017	-1,838.00	CLN	—	—
OVPR	Overpayment Reduc	02/02/2007	10/01/2007	-3,589.02			
OVPR	Overpayment Reduc	10/02/2007	11/01/2007	-2,050.77			

Command ==> F1=Help F3=Exit F5=Popup F6=Cancel
F9=FindClm F10=Nav F11=BASMenu

BBPH

Payment History

BENEFITS

Enter Action and press Enter.

Claimant: Garay, Sheri

Clm Stat: CL TERM 181

Page :001

More : +

Below Action: (1=Pyamt Hst Detail 2=EOB Copies 3=Stops and Reversals)

Act	Release Dt	Payee	Amount	Pyamt		Status	Status Dt
				#	Type		
	08/28/2007	CLN	0.00	29503404	EOB	Fleet	PAID 08/28/2007
	07/28/2007	CLN	0.00	29237150	EOB	Fleet	PAID 07/28/2007
	06/27/2007	CLN	0.00	28972809	EOB	Fleet	PAID 06/27/2007
	05/28/2007	CLN	0.00	28713738	EOB	Fleet	PAID 05/28/2007
	04/26/2007	CLN	0.00	28446065	EOB	Fleet	PAID 04/26/2007
	03/28/2007	CLN	0.00	28199452	EOB	Fleet	PAID 03/28/2007
	02/24/2007	CLN	0.00	27927008	EOB	Fleet	PAID 02/24/2007
	01/27/2007	CLN	0.00	27685373	EOB	Fleet	PAID 01/27/2007
	12/28/2006	CLN	3,589.02	27452949	EFT	Fleet	PAID 12/28/2006
	11/27/2006	CLN	3,589.02	27184520	EFT	Fleet	PAID 11/27/2006
	10/28/2006	CLN	5,427.02	26932432	EFT	Fleet	PAID 10/28/2006

Command ==>

F1=Help

F3=Exit

F5=Popup

F6=Cancel

F8=Fwd

F9=FindClm

F10=Nav

F11=BASMenu

07:20:00 Thu Jan 24, 2008

BBPH

Payment History

BENEFITS

Enter Action and press Enter.

Claimant: Garay, Sheri

Clm Stat: CL TERM 181

Page :002

More :- +

Below Action: (1=Pyamt Hst Detail 2=EOB Copies 3=Stops and Reversals)

Act	Release Dt	Payee	Amount	Pyamt #	Type	Bank	Status		Dt
							Pymt	Status	
09/27/2006	CLN	5,427.02	26669737	EFT	Fleet		PAID		09/27/2006
08/28/2006	CLN	5,121.99	26407318	EFT	Fleet		PAID		08/28/2006
07/27/2006	CLN	4,449.83	26135193	EFT	Fleet		PAID		07/27/2006
06/27/2006	CLN	4,427.02	25878781	EFT	Fleet		PAID		06/27/2006
05/27/2006	CLN	4,427.02	25613813	EFT	Fleet		PAID		05/27/2006
04/27/2006	CLN	4,427.02	25359914	EFT	Fleet		PAID		04/27/2006
03/28/2006	CLN	4,427.02	25094877	EFT	Fleet		PAID		03/28/2006
02/25/2006	CLN	4,427.02	24830597	EFT	Fleet		PAID		02/25/2006
01/28/2006	CLN	4,427.02	24583585	EFT	Fleet		PAID		01/28/2006
12/28/2005	CLN	4,427.02	24329318	EFT	Fleet		PAID		12/28/2005
11/26/2005	CLN	4,427.02	24054162	EFT	Fleet		PAID		11/26/2005

Command ==>

F1=Help

F3=Exit

F5=Popup

F6=Cancel

F7=Bkwd

F8=Fwd

F9=FindClm

F10=Nav

07:20:01 Thu Jan 24, 2008

BBPH

Payment History

BENEFITS

Enter Action and press Enter.

Claimant: Garay, Sheri

Clm Stat: CL TERM 181

Page :003

More :- +

Below Action: (1=Pymt Hst Detail 2=EOB Copies 3=Stops and Reversals)

Act	Release Dt	Payee	Amount	Pyamt		Status	Status Dt
				Type	Bank		
10/27/2005	CLN	4,427.02	23798468	EFT	Fleet	PAID	10/27/2005
09/27/2005	CLN	4,427.02	23537089	EFT	Fleet	PAID	09/27/2005
08/27/2005	CLN	4,427.02	23265423	EFT	Fleet	PAID	08/27/2005
07/28/2005	CLN	4,427.02	23012169	EFT	Fleet	PAID	07/28/2005
06/27/2005	CLN	4,427.02	22735097	EFT	Fleet	PAID	06/27/2005
05/28/2005	CLN	4,427.02	22478493	EFT	Fleet	PAID	05/28/2005
04/30/2005	CLN	4,427.02	22228875	EFT	Fleet	PAID	04/30/2005
03/28/2005	CLN	4,427.02	21938647	EFT	Fleet	PAID	03/28/2005
02/28/2005	CLN	4,427.02	21695058	EFT	Fleet	PAID	02/28/2005
01/27/2005	CLN	4,427.02	21417261	EFT	Fleet	PAID	01/27/2005
12/29/2004	CLN	4,427.02	21173038	EFT	Fleet	PAID	12/29/2004

Command ==>

F1=Help	F3=Exit	F5=Popup	F6=Cancel
F7=Bkwd	F8=Fwd	F9=FindClm	F10=Nav
		F11=BASMenu	

BBPH

Payment History

BENEFITS

Enter Action and press Enter.

Claimant: Garay, Sheri Clm Stat: CL TERM 181 Page :004
More :-

Below Action: (1=Pyamt Hst Detail 2=EOB Copies 3=Stops and Reversals)

Pyamt

Act	Release Dt	Payee	Amount	Pyamt #	Type	Bank	Status	Status	Dt
	11/27/2004	CLN	4,427.02	20899446	EFT	Fleet	PAID		11/27/2004
	10/28/2004	CLN	4,427.02	20643184	EFT	Fleet	PAID		10/28/2004
	09/27/2004	CLN	4,427.02	20365466	EFT	Fleet	PAID		09/27/2004
	08/30/2004	CLN	4,427.02	20121168	EFT	Fleet	PAID		08/30/2004
	08/02/2004	CLN	4,427.02	19876453	EFT	Fleet	PAID		08/02/2004
	07/19/2004	CLN	4,427.02	19751259	EFT	Fleet	PAID		07/19/2004
	07/14/2004	CLN	13,281.06	19709290	EFT	Fleet	PAID		07/14/2004

Command ==>

F1=Help F3=Exit F5=Popup F6=Cancel
F7=Bkwd F9=FindClm F10=Nav F11=BASMenu

BBHD

Payment History Detail

BENEFITS

Claimant: Garay, Sheri Clm Stat: CL TERM 181

Pymt Amt : 0.00

Pymt # . : 29503404 Payee Name: Sheri Garay

Release Dt: 08/28/2007 Mailee . :

Status . : PAID Schd Type : RGR

Pymt Text : 311

Sp Routing:

Created . : CWX04

Approved :

Reissued : Pymt Period: 08/02/2007 - 09/01/2007 Mthly Basis: 30-Day
PR/

Comp Desc Begin Dt End Dt Amount ST Text

Basic Benefit 08/02/2007 09/01/2007 5,427.02

Primary Social Security 08/02/2007 09/01/2007 -1,838.00

Overpayment Reduction 08/02/2007 09/01/2007 -3,589.02

Command ==>

F1=Help

F3=Exit

F9=FindClm F10=Nav

F5=Popup

F11=BASMenu

F6=Cancel

07:20:12 Thu Jan 24, 2008

BBOP

Overpayment

BENEFITS

Claimant: Garay, Sheri

Clm Stat: CL TERM 181

Page: 001

More: +

Ovrpym Amt: 36,821.27 Reason: SSA Recvry Mthd: RVR Monthly Amt: 3589.00
Bal Due . : 0.00

Whose \$? : CLN

Tax Yr	Begin Dt	End Dt	Amount	Balance Due
2006	01/02/2006	11/01/2006	18,380.00	0.00
2005	01/02/2005	01/01/2006	18,441.27	0.00

Tax Detail : Y

Overpayment Recovery: Below Action: (1=Payment History Detail)

Act	Type	Pymt #	Receive Dt	Amount	Acct	Stat	Status Dt
-----	------	--------	------------	--------	------	------	-----------

WVEOTH			09/10/2007	5,639.79			09/10/2007
OVRRVR	029503404		08/28/2007	3,589.02			08/28/2007
OVRRVR	029237150		07/28/2007	3,589.02			07/28/2007

Command ==>

F1=Help	F3=Exit	F4=SelOP	F5=Popup	F6=Cancel
F8=Fwd	F9=FindClm	F10=Nav	F11=BASMenu	

BBPS

Program Status

LTD BENEFITS

Claimant: Garay, Sheri

Clm Stat: CL TERM 181

Act Create Dt	User	Off	Eff Dt	Program ID	Status
03/15/2004	C22JP	GORT	03/15/2004	ERISA	Extension Requested
09/14/2006	CBH04	E112		Triaged @ Xfer	Sent to Complex
07/13/2006	CBH04	E112		Triaged @ Xfer	Sent to Complex

Command ==>

F1=Help

F3=Exit

F5=Popup

F6=Cancel

F9=FindClm

F10=Nav

F11=BASMenu

1 **PROOF OF SERVICE BY MAIL**
2

3 I am employed at Rimac & Martin, 1051 Divisadero Street, San Francisco, California
4 94115. I am over the age of 18 years and am not a party to this action.

5 On February 21, 2008, I served the within **NOTICE OF REMOVAL OF CIVIL**
6 **ACTION TO UNITED STATES DISTRICT COURT; CERTIFICATION OF**
7 **INTERESTED ENTITIES OR PERSONS; CIVIL CASE COVER SHEET** on the interested
8 parties hereto by placing said document in a sealed envelope with first class postage fully prepaid
9 thereon, and depositing same with the U.S. Postal Service at San Francisco, California, addressed
10 as follows:

11 John F. Martin, Esq.
12 Law Offices of John F. Martin
13 3100 Oak Road, Suite 230
Walnut Creek, CA 94596

14 I declare under penalty of perjury under the laws of the United States of America that the
15 foregoing is true and correct.

16 Executed February 21, 2008, at San Francisco, California.

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19 
20 Karl H. Plischke

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